## IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA

Anthony James, #310987, a/k/a Anthony	)	C/A No.: 1:10-2794-HMH-SVH
Glenn James, Jr.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	REPORT AND RECOMMENDATION
	)	
Lt. Wonda Scarborough and Anthony J.	)	
Padula, Warden of Lee Correctional	)	
Institution,	)	
	)	
Defendants.	)	
	_ )	

Plaintiff Anthony James, proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Before the court is Plaintiff's Motion for an Entry of Default [Entry #15]. All pretrial proceedings in this case were referred to the undersigned magistrate judge pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02(B)(2)(d) (D.S.C.). Because the motion for default is a dispositive motion, this Report and Recommendation is entered for review by the district judge.

In his motion dated January 24, 2011, Plaintiff moves for an entry of default based on Defendants' failure to file an answer or otherwise plead within 34 days of the undersigned's December 21, 2010 order directing service of the complaint on Defendants by the United States Marshal Service. A review of the docket indicates Defendants were served on February 3, 2011 [Entry #16, #17] and filed an answer to the complaint on February 10, 2011.

Pursuant to Fed. R. Civ. P. 12(a)(1)(A)(i), unless otherwise specified by a rule or statute, a defendant must serve an answer within 21 days after being served with the summons and complaint. Therefore, the date of service of process, and not the date of the order directing service, is the relevant date for determining when the time for responding to a complaint begins to run. In the instant case, Defendants served their answer seven days after service was effected and are not in default. Accordingly, it is recommended that Plaintiff's motion for an entry of default [Entry #15] be denied.

IT IS SO RECOMMENDED.

Shin V. Halper

March 21, 2011 Florence, South Carolina Shiva V. Hodges United States Magistrate Judge

The parties are directed to note the important information in the attached "Notice of Right to File Objections to Report and Recommendation."